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May 15, 2006

**DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS**

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: March 22, 2005

Case Number: TSO-0209

This Decision concerns the eligibility of XXXXXXXXXXXX (the individual) to hold an access authorization¹ under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by the Manager of a Department of Energy (DOE) local office pursuant to the provisions of Part 710. Based on the record before me, the individual's access authorization should not be restored.

I. Background

The individual is an employee of a contractor at a DOE facility. After the individual was arrested for Driving While Intoxicated (DUI) on January 12, 2000, the DOE local office conducted a Personnel Security Interview (PSI) with the individual on October 23, 2001. *See* DOE Exhibits 3-3, 4-1. Because the security concern remained unresolved after the PSI, the DOE local office requested that the individual be interviewed by a DOE consultant psychiatrist. The psychiatrist interviewed the individual on April 1, 2004. *See* DOE Exhibits 2-1, 2-2. The DOE local office ultimately determined that the derogatory information concerning the individual created a substantial doubt about his eligibility for an access authorization, and that the doubt could not be resolved in a manner favorable to him. Accordingly, the DOE local office suspended the individual's access authorization, and proceeded to obtain authority to initiate an administrative review proceeding.

¹Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a). Such authorization will be referred to variously in this Decision as access authorization or security clearance.

The administrative review proceeding began with the issuance of a Notification Letter to the individual. *See* 10 C.F.R. § 710.21. That letter informed the individual that information in the possession of the DOE created a substantial doubt concerning his eligibility for access authorization. The Notification Letter included a statement of that derogatory information and informed the individual that he was entitled to a hearing before a Hearing Officer in order to resolve the substantial doubt regarding his eligibility for access authorization. The individual requested a hearing, and the DOE local office forwarded the individual's request to the Office of Hearings and Appeals (OHA). The Director of OHA appointed me as the Hearing Officer in this matter.

At the hearing convened pursuant to 10 C.F.R. § 710.25(e) and (g), I took testimony from the individual, his wife, a long-time coworker and acquaintance of the individual, and the DOE psychiatrist. The DOE Counsel submitted exhibits prior to the hearing. I closed the record upon receiving the transcript of the hearing on July 15, 2005.

I have reviewed and carefully considered the evidence in the record. I have considered the evidence that raises a concern about the individual's eligibility to hold a DOE access authorization. I have also considered the evidence that mitigates that concern. And I conclude, based on the evidence before me and for the reasons explained below, that the security concern has not been sufficiently resolved.

II. Analysis

A. The Basis for the DOE's Security Concern

As indicated above, the Notification Letter issued to the individual included a statement of the derogatory information in the possession of the DOE that created a substantial doubt regarding the individual's eligibility for access authorization. In the Notification Letter, the DOE characterized this information as indicating that the individual "is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse" and suffers from "an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in the judgment or reliability of" the individual. *See* 10 C.F.R. § 710.8(h), (j). The Notification Letter also asserted that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security." *See* 10 C.F.R. § 710.8(l).

These statements were based on an May 18, 2004 diagnosis by the DOE consultant psychiatrist that the individual suffered from "alcohol dependence, early, partial or full remission." DOE Exhibit 2-1. The Notification Letter also cited arrests of the individual in 1979, 1982, 1987, 1989, 1990, and 2000, including three arrests for DUI (1987, 1989, and 2000) and one for Transporting an Open Container (1990), and a citation for Open Container in Public in 1994. The common thread running

through the information cited under each of the regulatory criteria is the individual's problematic use of alcohol.

In an April 2, 2004 report, the DOE psychiatrist concluded that the individual met the following criteria for substance dependence, alcohol set forth in the Diagnostic and Statistical Manual of Mental Disorders IV-TR (DSM-IV-TR):

A maladaptive period of alcohol use leading to clinically significant impairment or distress, as manifested by three (or more) of the following, occurring at any time in the same 12-month period:

....

(3) the substance is often taken in larger amounts or over a longer period than was intended

(4) there is a persistent desire or unsuccessful efforts to cut down or control substance use

....

(7) The substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance (e.g., alcohol use despite past DUIs or hypertension)

DOE Exhibit 2-2 at 11.

The DOE psychiatrist further found that the individual's substance dependence was "Without Physiological Dependence" and in "Sustained Full Remission (based on the assumption that [the individual] has not drunk alcohol for more than one year)." *Id.*

The DOE psychiatrist concluded his April 2, 2004 report by (1) answering "Yes" to the question of whether the individual is a user of alcohol habitually to excess or is alcohol dependent or suffers from alcohol abuse, (2) answering "Yes" to the question of whether there was adequate evidence of rehabilitation or reformation, "if in fact the subject has not consumed alcohol in two years," and (3) answering "No" to the question of whether the individual has an illness or mental condition which causes, or may cause, a significant defect in the judgment or reliability, "with the understanding that [the individual] has continued to strictly abstain from drinking alcohol for two years and does not resume use in the future." *Id.* at 12.

On May 18, 2004, the DOE psychiatrist submitted a revised report to the DOE “because of additional data that were pointed out to me by [a DOE security analyst] on May 10, 2004 from [the individual’s Personnel Security File (PSF)].” Exhibit 2-1 at 1. The psychiatrist stated that the data “add to the list of discrepancies between [the individual]’s reports in his PSF and the information he gave me on April 1, 2004. Such discrepancies bring into question the validity of his self-reported use of alcohol.” *Id.* at 2. Among other things, the psychiatrist pointed to information provided by the individual’s wife when she was interviewed by an Office of Personnel Management (OPM) investigator in 2003. *Id.* at 1. “Based on the 2003 testimony of [the individual’s wife] that her husband was continuing to drink beer well into 2003 and did not appear to have the intention of quitting alcohol consumption,” the psychiatrist concluded, “I do not believe that [the individual] has shown adequate evidence of rehabilitation or reformation” *Id.* at 3. The psychiatrist also revised his previous conclusion “that he was in Sustained Remission to that he is in Early, Full or Partial Remission, depending upon whether or if he has stopped drinking any alcohol in the last 12 months.” *Id.* (emphasis in original).

At the hearing, the individual’s attorney, in his cross-examination of the DOE psychiatrist, raised questions as to what led the psychiatrist to revise his report, at least implying that the DOE analyst who contacted the psychiatrist improperly influenced his opinion. Transcript of Personnel Security Hearing (Tr.) at 29-30, 35.

However, while the process leading to the DOE psychiatrist’s revised report does appear to be unusual, I need not rely on the revised report in order to find a substantial security concern in this case. This is because in the psychiatrist’s original April 2, 2004 report, the validity of which has not been challenged, he opined that the “odds of [the individual] consuming alcohol again to excess are high but his abstinence for two years, if accurate, is a positive sign.” DOE Exhibit 2-2 at 11.

It is true, as the individual’s attorney emphasizes, that the psychiatrist also found in the same April 2, 2004 report that the individual “has shown adequate evidence of rehabilitation or reformation.” *Id.* at 12. Yet, this finding clearly cannot end the matter where, as here, the DOE psychiatrist has also found that the chances of the individual consuming alcohol to excess again are high. In other DOE access authorization proceedings, hearing officers have consistently found that the excessive use of alcohol might impair an individual’s judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *See, e.g., Personnel Security Hearing, Case No. TSO-0168, 29 DOE § 82,807 (2005) (and cases cited therein).*

B. Whether the Security Concerns Have Been Resolved

A hearing under Part 710 is held “for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization,” i.e., “to have the substantial doubt regarding eligibility for access authorization resolved.” 10 C.F.R. § 710.21(b)(3), (6). Under the Part 710

regulations, the Hearing Officer is directed to make a predictive assessment as to whether restoring access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In resolving a question concerning an individual's eligibility for access authorization, all DOE officials involved in the decision-making process shall consider: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors.

10 C.F.R. § 710.7(c).

Of the factors set forth above, I find that the ones most pertinent to the present case are “the absence or presence of rehabilitation or reformation” and “the likelihood of continuation or recurrence.” In considering these factors below, I find that (1) there remain unresolved questions as to how long the individual has been abstinent from the use of alcohol, primarily because of the unreliability of the reports of both the individual and his wife, which in turn casts doubt on the extent of the individual’s rehabilitation and reformation; and (2) as to the likelihood of recurrence, there remains too great a risk that the individual will return to the use of alcohol.

1. The Absence or Presence of Rehabilitation or Reformation

The individual testified at the hearing that he had abstained from alcohol use for the previous 3 ½ to 4 years. Tr. at 105. After this testimony, the individual’s attorney asked the DOE psychiatrist,

based on what you've seen and heard in the hearing today, do you think that there's been adequate evidence of rehabilitation or reformation?

[DOE Psychiatrist]: Well, that two-year time if the testimony today are accurate have been fulfilled so that there has been.

[Individual’s Attorney]: Okay. And assuming that there has been, does [the individual] currently have an illness or mental condition which causes or may cause a significant defect in judgment or reliability?

[DOE Psychiatrist]: The qualified answer is no, with the qualification that you're at higher risk than someone who's never drunk alcohol--

Tr. at 138.

The qualification in the psychiatrist’s answer as to whether “the testimony today [is] accurate” is not insignificant, though it appears that the psychiatrist did believe the individual had abstained from using alcohol, albeit apparently for not as long as the individual claimed. Tr. at 124. (“What you’ve accomplished is very commendable if in fact you’ve not had a drop of alcohol, and I believe you . . . [f]or over two years, maybe even three years possibly.”). It is also clear from the DOE psychiatrist’s testimony that, at least in the present case, his finding of “adequate evidence of rehabilitation or reformation” was solely a function of whether the “two-year time . . . ha[s] been fulfilled . . .”

HEARING OFFICER GOERING: . . . It sounds to me like you’re saying that just based on the amount of time that he’s abstained that you can have adequate evidence of reformation and rehabilitation.

[DOE PSYCHIATRIST]: Yes.

Tr. at 143-44.

In his closing argument, the attorney for the individual framed this issue as whether the individual meets the regulatory criteria, although having had the diagnosis of alcohol dependence, has exhibited adequate evidence of reformation. The only credible medical evidence is that he does not possess a defect or disease at this time which would--an illness or mental condition which causes or may cause a significant defect in judgment or reliability, to use the standard language.

Tr. at 147.

To avoid confusion, I must first note that the term “adequate evidence of rehabilitation or reformation” is to be found nowhere in the Part 710 regulations, and in that sense is part of no “regulatory criteria.” As such, the term is undefined, and thus when the question of “adequate evidence of rehabilitation or reformation” is put to DOE psychiatrists, as it often is, it is helpful to know how the particular psychiatrist defines the term, which in this case focused on length of abstinence from alcohol use.²

² A recently issued DOE hearing officer decision illustrates very well the need to inquire as to the DOE psychiatrist’s definition of the term “adequate evidence of rehabilitation or reformation,” as well as the questionable value of putting this question to outside experts. *Personnel Security Hearing*, Case No. TSO-0320, slip op. (May 3, 2006). At best, asked by the DOE without a standard definition, the term means entirely different things to different psychiatrists. At worst, in coming up with a definition of the term for purposes of a Part 710 proceeding, the outside expert may in fact be opining in an area outside of his field of expertise, e.g., whether a particular security concern is “acceptable.” *Id.* at 2 (DOE psychiatrist “struggled with [the definition] for years,” ultimately defining “adequate

Whatever the particular definition used, a DOE consultant psychiatrist's opinion on this question should not be conflated with the ultimate determination as to whether there is evidence adequate to warrant the granting or restoration of a security clearance. There is no doubt that "credible medical evidence" plays a very important role in my consideration, mandated by regulation, of the "absence or presence of rehabilitation" and "the likelihood of continuation or recurrence." 10 C.F.R. § 710.7(c). However, the determination as to whether such evidence is "adequate" to warrant the restoration of a security clearance is one to be made by DOE officials, including the hearing officer, not by a consultant psychiatrist. 10 C.F.R. 710.7(c) ("question concerning an individual's eligibility for access authorization" is to be decided by "DOE officials involved in the decision-making process. . .").

In this case, I can concur with a opinion of the DOE psychiatrist as to the presence of rehabilitation and reformation only to the extent I have confidence that, at the time of the hearing, the individual had not consumed alcohol in the previous two years. And while the DOE psychiatrist appears to believe (at least to some degree) the individual's self-report of abstinence, I am less confident with respect to the testimony of both the individual and his wife.³

a. Testimony of Individual

A consistent feature of the individual's testimony at the hearing was an unwillingness or inability to admit to the extent of his alcohol consumption and the problems it has caused. This, in my opinion, calls into question the reliability of the individual's claim of sustained abstinence.

For example, when the individual was charged in 1979 with "unlawful interference with a police officer," two officers respectively described the individual as "very intoxicated, staggering, slurring words," and "highly intoxicated." DOE Exhibit 3-10. Yet, at the present hearing, when asked, point blank, by his attorney if he "had been pretty drunk that time," the individual's only response was, "I had been drinking." Tr. at 98.

The individual immediately proceeded to deny that alcohol was a factor in a subsequent 1982 arrest at a basketball game, an event he stated he remembered "clearly." *Id.* This description is similarly contradicted by the contemporaneous police report, which described him as "extremely intoxicated." DOE Exhibit 3-9. Under cross-examination by the DOE counsel, the individual first denied having anything to drink prior to the basketball game, then admitted, "maybe I had a few beers." Tr. at 112.

evidence of rehabilitation and reformation" as the risk of relapse over the next five years being below 10%, because that degree of risk "seemed" to present an "acceptable security concern").

³ Although the diagnosis of a mental illness is clearly within the field of expertise of the DOE psychiatrist, the ultimate issue as to the credibility of the witnesses at a hearing just as clearly remains one to be decided by the trier of fact, in this case the DOE hearing officer.

Further, when asked by his attorney at the hearing whether there was ever a time “that you had gone to work under the influence of alcohol,” the individual responded “Absolutely not.” Tr. at 100. Yet, a 1990 “Case Evaluation for Security Clearance” reports that the individual had been “sent home twice for being intoxicated/under the influence while on the job. Subject was unable to operate equipment safely.” DOE Exhibit 1-16. And though the individual’s supervisor and a nurse did not detect the smell of alcohol on the individual’s breath on those occasions, the same 1990 case evaluation states that a “source indicates subject has been to work under the influence of alcohol between six and eight times. Subject’s behavior was characterized by the odor of alcohol on subject’s breath, or about his person, slurred speech, blood-shot eyes and difficulty with balance and movement.” *Id.*

Regarding the individual’s most recent brush with the law, his January 2000 arrest for DUI, the individual testified that he was driving home after having played in his pool league. “I think you play a 5-game deal. I had two Coors lights, was coming home. The police followed me for about five miles.” Tr. at 94. As he approached his home, the individual testified that the police

didn't do anything, so I came up the street and I live about a block and a half from there, turned in, turned in my driveway, went in my front door, got in the house, going upstairs to go to bed, boom, see lights and I seen them looking at my truck; and I hollered out there, "What's happening, anything going on," and he got out of my truck.

They just sat there in their car, you know, and they wanted me to step outside and it was cold and I said, "Come on in." And so sitting there and, you know, I did the walk-throughs and stuff and actually thought it was very sufficient; and I don't know what the deal was but it was, you know, I know I didn't reek of alcohol and they said I didn't do--had to count back from--I don't know--I had to do multiples of seven on an adding or subtracting and I missed one from a hundred and they said that was sufficient.

Tr. at 94-95.

As was the case in prior incidents, the report filed by the police tells a somewhat different story. The officer notes that he turned on his emergency lights as he followed the individual turning onto his street, and that as soon as the individual parked his truck in his driveway, the officer immediately got out of his patrol car. The report states that the individual looked at the officer, and after the officer said “Sir I need to talk to you,” the individual walked into his house. The individual eventually returned to the front door of his house to ask what the officers wanted. He was asked to step outside to speak to the officers, but instead he asked the officers to come into the house. After asking the individual again to come outside, and the individual declining, the officers went inside the house. Once inside, one of the officers asked the individual

why he walked into the house without talking to us outside. He walked back to the kitchen. [The individual] said he did not see the lights until he got in the driveway. [The officer] asked him why he walked into the house without talking to us outside. He did not answer the question. [The individual's] eyes were very red around the inside of the lids and bloodshot. He could not finish his responses without looking around or looking at his wife. . . . [He] had a strong odor of alcohol on his breath, which I could smell standing about five to seven feet away from him.

DOE Exhibit 3-3. The individual's testimony as to this event is consistent with the police report in that both agree that the individual failed to pass a field sobriety test, the officer having "noticed several indicators of [the individual] being under the influence of alcohol," and that the individual refused to take a breath test either at his home, or at the police station where he was eventually taken. *Id.*

Cumulatively, the discrepancies described above lead me to conclude that the individual's self-reported history as it relates to alcohol consistently tends to depart from reality, toward a version of events that paints a more favorable view of himself, and that the individual is reluctant to take responsibility for his actions. After hearing the individual's testimony, the DOE psychiatrist expressed a similar opinion. Tr. at 122-24 ("it's hard to explain all of these [events] by somebody else's responsibility and not a big deal").

It is certainly possible that the individual has in fact been abstinent from alcohol for as long as he claims. However, I cannot conclude this with confidence based solely on the individual's testimony, given the apparent unreliability of the individual's other testimony when it comes to his relationship to alcohol.

b. Testimony of Individual's Wife

At the hearing, the individual's wife testified that her husband quit drinking sometime during the fall of 2002, Tr. at 90, making the length of his abstinence from alcohol somewhere between 2 ½ and 3 years at the time of the hearing. While the discrepancy between this and the individual's testimony (3 ½ to 4 years) is hardly in itself fatal to the individual's wife's credibility, more troubling is the fact that a background investigation of the individual conducted in 2003 reflects the following concerning the investigators interview with the individual's wife: "His alcohol use is limited to a beer or two once or twice a week at home. He consumes beer only, no hard liquor or wine. He will have 3 or 4 beers when they attend [local NFL] football games but does not drive while intoxicated." DOE Exhibit 5-1 at 54.⁴ Not only does the individual's wife's statement, as recorded by the

⁴ I note here that the reports places the dates of the investigation between April 25 and September 22, 2003. Thus, depending on when this particular interview took place, the individual's wife's statement as to drinking at football games may have been describing the 2003 football season, which would obviously be at odds with her testimony at the hearing. However, I find it more likely that she was referring to prior seasons, in light of hearing testimony of a co-worker recalling that the individual stopped drinking at football games beginning in 2002. Tr. at 66. But from neither

investigator, refer to her husband's drinking in the present tense, the report of the interview does not indicate the individual's wife ever mentioning the fact that her husband had quit drinking, an event that would be seemingly significant given the topic of the interview. The individual's wife's testimony at the hearing addressed both of these issues:

Q [by Individual's Attorney]. And with respect to this discussion about his drinking habits at home, were you talking about the present time?

A. No. No. It makes it sounds like I was, but I wasn't.

Q. Okay.

A. That's not what I said.

Q. Do you recall what she asked you about [the individual] and his drinking?

A. Well, we were just having a regular conversation and she made it sound like she asked me what he drank when, you know, before when he was drinking.

Q. Okay. And you told her--

A. She wasn't--she wasn't specific about a time frame.

Q. And she asked you what he would drink and you told her?

A. Yeah.

....

interpretation does one necessarily draw the conclusion that the individual had given up drinking completely by the time of the 2003 interview, as his wife now claims. Moreover, while the co-workers' testimony was, from my observation of the witness' demeanor, more credible than that of the individual or his wife, it unfortunately provides only a very limited glimpse of the individual's drinking habits, and therefore provides little support for a finding of sustained and total abstinence from alcohol use.

Q. And again, did she ever ask you if [the individual] had quit drinking?

A. No.

Q. Would that at all appear to be an issue or focus of the interview at the time that you discussed it with her?

A. No. No. She was more concerned with issues with the police.

Q. And what sorts of issues with the police did you discuss with her?

A. Well, that one.

Q. Okay. And that was the incident in 2000 when he got a DUI?

A. Yes.

Tr. at 82-83. I do not find that the hearing testimony of the individual's wife at all adequately explains her statement as recorded during the 2003 investigation. First, her impression that whether or when the individual had quit drinking was not a matter relevant to the "focus of the interview" is odd, even if the primary issue was the individual's 2000 arrest, given that the cause of the arrest was the individual's alcohol use, and the individual had supposedly quit drinking between the time of the arrest and the interview. More importantly, I cannot understand how the investigator would have constructed a question that "made it sound like she asked me what he drank when, you know, before when he was drinking," and certainly not one that would have elicited the response reported by the investigator, particularly when the individual's wife never told the investigator that the individual had stopped drinking.

The report of the 2003 interview reveals another perplexing statement by the individual's wife, that her husband "has had no other arrests, alcohol related or otherwise, to her knowledge." DOE Exhibit 5-1 at 54. At the hearing, the individual's wife explained,

I was under the impression if she was asking me from that time--

Q. Forward.

A. From, right, from that time ever I remembered, like the last time, the one in 2000.

Q. So nothing before that?

A. No, nothing after that.

Q. Okay. It's just the way it's worded, it looks like he's never been arrested.

A. That's how I understood her question.

Tr. at 87. One could attribute this confusion to simply a misunderstanding or sloppy reporting by the investigator, were it not for the fact that there are similar statements by the individual's wife in a report of a previous investigation, conducted between November 8, 1995 and January 8, 1996. According to that report, she

said that her husband had a D.U.I sometime in the late 1980's (exact date unrecalled).

. . . .

To the best of her knowledge, it was a one-time event. Since his arrest, he has not had any other known alcohol-related arrests. Further, he has not had any other known prior alcohol-related arrests.

Regarding his consumption of alcohol, [the individual] drinks only beer, but in moderation. He drinks a few "Old Milwaukee" non-alcoholic beers during the week, and perhaps a few regular beers (about a six-pack) during the weekend while watching a sporting event on television.

He does not use any other kinds of alcohol. He certainly does not drink to the point of intoxication, and has never been drunk. He is not dependent on alcohol in any way.

DOE Exhibit 5-1 at 86.

This account is blatantly at odds with the facts, in a number of respects. First, as the individual had been arrested for DUI in both 1987 and 1989, neither was a "one-time event." And the individual's wife was clearly aware of both arrests since, according to the relevant police reports, she reported to the scene of his 1989 arrest, DOE Exhibit 3-6, and picked the individual up from the police station after his 1987 arrest. DOE Exhibit 3-7.

Moreover, in 1990, both the individual and his wife were arrested on suspicion of transporting an open container of alcohol, after the vehicle in which they were passengers was stopped by the police. The police report described the individual as "very intoxicated. He had very bloodshot and watery eyes. A strong odor of consumed alcoholic beverage was detected on his person." The reporting officer "observed [the individual's wife] to be intoxicated also." DOE Exhibit 3-5. In addition, police reports put the individual's wife at the scene of both the individual's 1979 and 1982 arrests, in

which reports, as noted above, three different officers variously described the individual as being “extremely intoxicated” (1982), “very intoxicated,” and “highly intoxicated” (1979). DOE Exhibits 3-9, 3-10 (both reports refer to the individual’s wife by her maiden name). These reports can in no way be squared with the individual’s wife’s 1995 or 1996 description of her husband as one who “does not drink to the point of intoxication, and has never been drunk,” nor one who had had only one alcohol-related arrest.

Given the inaccuracy of her previous statements, the individual’s wife’s hearing testimony, like that of her husband, does not provide the evidence necessary for me to confidently conclude that the individual has abstained from consuming alcohol for any particular length of time. I therefore do not find a solid basis for the DOE psychiatrist’s opinion as to the extent of the individual’s rehabilitation and reformation, in that his opinion was based solely on the length of time the individual had been abstinent from alcohol use, and qualified by the condition “if the testimony today [is] accurate.” Tr. at 138, 143-44.

2. The Likelihood of Continuation or Recurrence

The ultimate question to be addressed in this decision is two-fold: (1) what is the risk of relapse? and (2) is the risk of relapse low enough that restoring the individual’s “access authorization would not endanger the common defense and security and would be clearly consistent with the national interest”? 10 C.F.R. § 710.27(a).

Given his acknowledged experience in the field of diagnosing and treating individuals with alcohol problems, the DOE psychiatrist is clearly qualified to render a reliable opinion as to the risk that the individual will have problems with alcohol in the future, certainly possessing more expertise on this question than anyone else participating in the administrative review process. Thus, I put the question to the DOE psychiatrist at the hearing:

Doctor, on a scale of zero to ten--zero being no chance he's going to drink again, ten being absolute certainty that he will drink again--how would you rate it?

[DOE Psychiatrist]: I'm in the five range;

....

I think that my five would be lower if I felt that there was a higher level of acknowledgment that there's been a problem; and, two, if there was a treatment program in place because this is a lifetime disorder.

....

[A]ttendance at AA would drop that number to three, three and a half. More acknowledgment by wife that this has been a problem. I mean when the police come in your house and essentially--I'm not sure if they arrested you in the house.

[Individual]: I invited them in.

[DOE Psychiatrist]: Whatever. They're at your house. Just saying you invited them in seems denial and defensive. The police are at your house, has followed you home. There's been some problem and that your wife doesn't say, "Geez, this is an issue".

Tr. at 135, 136, 144-45.

The stated factual basis for the assessment of the DOE psychiatrist is consistent with my observations at the hearing in this matter, namely that there is an apparent lack of acknowledgement by both the individual and his wife, more so by his wife, of the individual's alcohol problem. Given this, and the expertise of the DOE psychiatrist, I defer to his opinion that there is approximately a 5-in-10 (or 50%) chance that the individual will drink alcohol in the future. The implications of such a relapse, should it occur, are serious, as the DOE psychiatrist testified when asked whether the individual would

ever be able to resume to the point where he could have one or two beers a week or is that something that would be advised against?

[DOE Psychiatrist]: That would—I would advise against. That just puts you in danger. That's such a temptation. It's such a temptation and it's a very obvious question and it's been studied to death.

[Individual]: Okay.

[DOE Psychiatrist]: And the data indicate that that raises the chances of returning to problem drinking significantly. It is even more difficult, if not impossible, to drink one or two, period.

Tr. at 139.

Thus, in the case of the individual, any future use of alcohol entails a high risk that it will include excessive drinking, particularly given the individual's history, and as noted above, excessive use of alcohol in turn amplifies the risk that the individual will fail to safeguard classified matter or special nuclear material. Under the circumstances of this case, with a 50% chance that the individual will

drink alcohol in the future, the risk is too high to warrant restoring the individual's security clearance.

III. Conclusion

Upon consideration of the record in this case, I conclude that there is insufficient evidence to support a finding that the individual has abstained from the consumption of alcohol for any particular length of time, thus calling into question the degree to which he has achieved rehabilitation or reformation. Moreover, the relatively high chance that the individual will use alcohol in the future presents an unacceptable risk, such that I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a); *see also* 10 C.F.R. § 710.7(a) ("Any doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security."). Accordingly, the individual's access authorization should not be restored.

The individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven J. Goering
Hearing Officer
Office of Hearings and Appeals

Date: May 15, 2006